

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:
Robert O. Banker

Serial No.:
09/692,920

Filed:
October 20, 2000

For:
Media on Demand Title Indexing System

Confirmation No.: 8465

Group Art Unit:
2623

Examiner:
Idowu, Olugbenga O.

Docket No.:
A-6685

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief under 37 C.F.R. § 41.37 is submitted in support of the Notice of Appeal filed on October 21, 2008, responding to the final Office Action mailed July 22, 2008 (see, e.g., part of Paper No./Mail Date 20080626).

I. REAL PARTY IN INTEREST

The real party in interest of the instant application is Scientific-Atlanta, Inc., having its principal place of business at 5030 Sugarloaf Parkway, Lawrenceville, GA 30044. Scientific-Atlanta, Inc., the assignee of record, is wholly owned by Cisco Systems, Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF THE CLAIMS

Claims 1-5, 16-18, 21-23, 25-27, 32, 34-35, 38-40 and 42-59 stand finally rejected by the final Office Action mailed July 22, 2008, and are the subject of this appeal. Claims 6-15, 19-20, 24, 28-31, 33, 36-37, and 41 were cancelled during prosecution.

IV. STATUS OF AMENDMENTS

There have been no claim amendments made after the final Office Action, and all amendments made before the final Office Action have been entered. The claim listing in section VIII (CLAIMS – APPENDIX, below) represents the present state of the claims.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Embodiments of the claimed subject matter are summarized below with reference numbers and references to the written description ("specification") and drawings. The subject matter described below appears in the original disclosure at least where indicated, and may further appear in other places within the original disclosure.

Embodiments of the claimed subject matter, such as those defined by independent claim 1, define a method for providing media information to a user via an interactive media services client device (see, e.g., p. 6 line 25 to p. 7 line 20; FIG. 2, and ref. num. 16) coupled to a programmable media services server device (see, e.g., p. 5 lines 1-25; and FIG. 2, ref. num. 19). The method comprises the steps of: receiving media information corresponding to a plurality of accessible media (see, e.g., p. 5 lines 1-15; and p. 9, line 30 to p. 10 line 5); configuring a display order of media titles (see, e.g., p. 12, lines 1-30; FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information according to the value of a media information parameter (see, e.g., p. 14 line 30 to p. 15 line 30; and FIG. 11, ref. num. 163); configuring each index in a continuous sequence of variably sized user-selectable index ranges (see, e.g., p. 12 lines 1-10; p. 12 line 30 to p. 13 line 10; p. 13 lines 10-30; p. 13 line 30 to p. 14 line 10; p. 14 lines 10-30; p. 16, lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191), the size of each of the index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) based on a predetermined threshold number of media titles (see, e.g., p. 12 lines 1-10; p. 14 lines 5-30; and p. 17 lines 10-20); configuring the continuous sequence of variably sized user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) for indexing the media titles

(see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the display order (see, e.g., p. 12, lines 1-30), each user-selectable index range (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) corresponding directly to the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information determined by a respective range of values of the media information parameter (see, e.g., FIG. 11, ref. num. 163) corresponding to the user-selectable index range (see, e.g., p. 14, lines 10-30; p. 6 lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191), such that selection of any of the user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) automatically provides (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the selected index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191); presenting, to the user, the selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) in an interactive media guide display (see, e.g., FIG. 10, ref. num. 150; and FIG. 14, ref. num. 190), each of the user selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) being configured to provide the media titles (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; and p. 16, lines 5-20) according to the threshold defining a predetermined number of media titles (see, e.g., p. 12 lines 1-10; p. 14 lines 5-30; and p. 17 lines 10-20); receiving selection of a first user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20), the selection being a triggering event to provide at least a portion of the media titles corresponding to the first user-selectable index range and without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; and p. 16, lines 5-20); and directly responsive to a user selecting a first user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20), providing simultaneously in the display order (see, e.g., p. 12 lines

10-30; p. 14 lines 10-30; p. 16 lines 5-20) at least a portion of the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the first user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20), wherein, in response to determining that the number of media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the first user-selectable index range is less than the threshold, combining the first user-selectable index range with an index within another user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20) such that the media titles corresponding to the first user-selectable index range and the index within another user-selectable index may be accessed via a combined user-selectable index range (see, e.g., p. 12 lines 1-10; p. 14 lines 5-30).

Embodiments of the claimed subject matter, such as those defined by independent claim 2, define a method for providing media information to a user via an interactive media services client device (see, e.g., p. 6 line 25 to p. 7 line 20; FIG. 2, and ref. num. 16) coupled to a programmable media services server device (see, e.g., p. 5 lines 1-25; and FIG. 2, ref. num. 19). The method comprises the steps of: receiving media information corresponding to a plurality of accessible media (see, e.g., p. 5 lines 1-15; and p. 9, line 30 to p. 10 line 5); configuring an interactive media guide (see, e.g., FIG. 10, ref. num. 150; and FIG. 14, ref. num. 190) with a display order of the media titles (see, e.g., p. 12, lines 1-30; FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information according to the value of a media information parameter and according to a portion of the received media information corresponding to a user-selected category (see, e.g., p. 14 line 30 to p. 15 line 30; and FIG. 11, ref. num. 163); determining a first range of values of the media information parameter corresponding to each index in a continuous sequence of variably sized user-selectable index ranges (see, e.g., p. 12 lines 1-10; p. 12 line 30 to p. 13 line 10; p. 13 lines 10-30; p. 13 line 30 to p. 14 line 10; p. 14 lines 10-30; p. 16, lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191), the size of each of the index ranges (see, e.g.,

FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) based on a predetermined threshold number of media titles in the portion of the received media information corresponding to the respective range of values (see, e.g., p. 12 lines 1-10; p. 14 lines 5-30; and p. 17 lines 10-20); configuring the interactive media guide (see, e.g., FIG. 10, ref. num. 150; and FIG. 14, ref. num. 190) with the continuous sequence of variably sized user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) indices for indexing the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the display order (see, e.g., p. 12, lines 1-30); presenting to a user an interactive media guide (see, e.g., FIG. 10, ref. num. 150; and FIG. 14, ref. num. 190) having a plurality of indexing prompts (see, e.g., FIG. 5, ref. nums. 104, 105, and 106), each of the indexing prompts (see, e.g., FIG. 5, ref. nums. 104, 105, and 106) directly corresponding to one and only one user-selectable index range (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191), such that selection of any of the user-selectable index ranges automatically provides (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the selected index (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20); receiving a first user input indicating selection of a first user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20), the selection being a triggering event to provide at least a portion of the media titles corresponding to the first user-selectable index range and without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; and p. 16, lines 5-20); and responsive to the first user input, providing simultaneously in the display order (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) at least a portion of the media titles corresponding to the first user-selectable index range (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) and the user-selected category (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20).

Embodiments of the claimed subject matter, such as those defined by independent claim 17, define an interactive media services client device (see, e.g., FIG. 3, ref. num. 16) for providing media information to a user (see, e.g., p. 6 line 25 to p. 7 line 20). The interactive media services client device comprises: memory (see, e.g., FIG. 3, ref. nums. 49, 51, and 52) for storing media information received from a server, said media information corresponding to a plurality of respective accessible media (see, e.g., p. 6 line 25 to p. 7 line 20); and a processor (see, e.g., FIG. 3, ref. num. 44) configured to (see, e.g., p. 47, lines 20-30): cause a display order of the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information according to the value of the release year of the media title (see, e.g., p. 14 line 30 to p. 15 line 10; p. 15 lines 10-30); enable a continuous sequence of variably sized user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191), for indexing displayed media titles (see, e.g., p. 12 lines 1-10; p. 12 line 30 to p. 13 line 10; p. 13 lines 10-30; p. 13 line 30 to p. 14 line 10; p. 14 lines 10-30; and p. 16, lines 5-20), each user-selectable index range directly corresponding to a range of time (see, e.g., p. 16 lines 5-20), the size of each of the index ranges based on a predetermined threshold number of media titles (see, e.g., p. 12 lines 1-10; p. 14 lines 5-30; and p. 17 lines 10-20); determine the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information corresponding to each user-selectable index range (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) and a user-selected category (see, e.g., p. 14 line 30 to p. 15 line 30; and FIG. 11, ref. num. 163); present, to the user, the selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) in an interactive media guide display (see, e.g., FIG. 10, ref. num. 150; and FIG. 14, ref. num. 190), each of the user selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) being configured to provide a portion of the media titles (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; and p. 16, lines 5-20) based on a predetermined threshold number of media titles (see, e.g., p. 12 lines

1-10; p. 14 lines 5-30; and p. 17 lines 10-20), directly in response to selection of one of the selectable index ranges (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20); and directly responsive to a user input, provide simultaneously in the display order (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) at least a portion of the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information corresponding to a first user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20) and the user-selected display, without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; and p. 16, lines 5-20).

Embodiments of the claimed subject matter, such as those defined by independent claim 52, define an interactive media services client device (see, e.g., FIG. 3, ref. num. 16) for providing media information to a user (see, e.g., p. 6 line 25 to p. 7 line 20). The interactive media services client device comprises: memory (see, e.g., FIG. 3, ref. nums. 49, 51, and 52) for storing media information received from a server, said media information corresponding to a plurality of respective accessible media (see, e.g., p. 6 line 25 to p. 7 line 20); and a processor (see, e.g., FIG. 3, ref. num. 44) configured to (see, e.g., p. 47, lines 20-30): cause a display order of media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information according to the value of a media information parameter and according to a portion of the received media information (see, e.g., p. 14 line 30 to p. 15 line 30; and FIG. 11, ref. num. 163); determine a range of values of the media information parameter corresponding to each index in a continuous sequence of variably sized user-selectable index ranges (see, e.g., p. 12 lines 1-10; p. 12 line 30 to p. 13 line 10; p. 13 lines 10-30; p. 13 line 30 to p. 14 line 10; p. 14 lines 10-30; p. 16, lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191), the size of each of the index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) based on a predetermined threshold of number of media titles in the portion of the received media information corresponding to the respective

range of values (see, e.g., p. 12 lines 1-10; p. 14 lines 5-30; and p. 17 lines 10-20); enable an interactive media guide (see, e.g., FIG. 10, ref. num. 150; and FIG. 14, ref. num. 190) with the continuous sequence of variably sized user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) for indexing the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the display order (see, e.g., p. 12, lines 1-30); presenting to a user an interactive media guide (see, e.g., FIG. 10, ref. num. 150; and FIG. 14, ref. num. 190) having a plurality of indexing prompts (see, e.g., FIG. 5, ref. nums. 104, 105, and 106), each of the indexing prompts (see, e.g., FIG. 5, ref. nums. 104, 105, and 106) directly corresponding to one and only one of the user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) such that selection of any of the user-selectable index ranges automatically provides (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the selected index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20); receive a first user input identifying a first indexing prompt (see, e.g., FIG. 5, ref. nums. 104, 105, and 106) directly corresponding to a first user-selectable index range (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191); and directly responsive to the first user input, provide simultaneously in the first display order (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) at least a portion of the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the first user-selectable index range (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) and a user-selected category (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20), wherein the at least a portion of the media titles are displayed without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; and p. 16, lines 5-20).

Embodiments of the claimed subject matter, such as those defined by independent claim 59, define a method for providing media information to a user via an interactive media services client device (see, e.g., p. 6 line 25 to p. 7 line 20; FIG. 2, and ref. num. 16) coupled to a programmable media services server device (see, e.g., p. 5 lines 1-25; and FIG. 2, ref. num. 19). The method comprises the steps of: receiving media information corresponding to a plurality of accessible media (see, e.g., p. 5 lines 1-15; and p. 9, line 30 to p. 10 line 5); configuring a display order of media titles (see, e.g., p. 12, lines 1-30; FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information according to the value of a media information parameter (see, e.g., p. 14 line 30 to p. 15 line 30; and FIG. 11, ref. num. 163); configuring each index in a continuous sequence of variably sized user-selectable index ranges (see, e.g., p. 12 lines 1-10; p. 12 line 30 to p. 13 line 10; p. 13 lines 10-30; p. 13 line 30 to p. 14 line 10; p. 14 lines 10-30; p. 16, lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) according to the display order, the size of each of the index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) based on a predetermined threshold number of media titles (see, e.g., p. 12 lines 1-10; p. 14 lines 5-30; and p. 17 lines 10-20); configuring the continuous sequence of variably sized user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) for indexing the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the display order (see, e.g., p. 12, lines 1-30), each user-selectable index range (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191) directly corresponding to the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) in the received media information determined by a respective range of values of the media information parameter (see, e.g., FIG. 11, ref. num. 163) corresponding to the user-selectable index range (see, e.g., p. 14, lines 10-30; p. 6 lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191), such that selection of any of the user-selectable index ranges (see, e.g., FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num.

191) automatically provides (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the selected index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20; FIG. 10, ref. nums. 151, 152, and 153; and FIG. 14, ref. num. 191); directly responsive to a user selecting a first user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20), providing simultaneously in the display order (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; p. 16 lines 5-20) at least a portion of the media titles (see, e.g., FIG. 5, ref. nums. 107 and 112; and FIG. 12, ref. nums. 171 and 173) corresponding to the first user-selectable index range (see, e.g., p. 14 lines 10-30; and p. 16, lines 5-20), wherein the at least a portion of the media titles are displayed without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range (see, e.g., p. 12 lines 10-30; p. 14 lines 10-30; and p. 16, lines 5-20).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed on appeal.

A. Claims 1-5, 32, 34- 35, 38-45, 52-55, and 57-59 stand rejected under 35 U.S.C. § 103(e) as allegedly being unpatentable *LaJoie* (U.S. 5,850,218) in view of *Rubinstein* (U.S. Patent No. 5,721,897) .

B. Claims 16 and 48 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *LaJoie* (U.S. 5,850,218) in view of *Rubinstein* (U.S. Patent No. 5,721,897) and further in view of *Knudson* (U.S. Pub. No. 2005/02024387).

C. Claims 17-18, 21-23, 25-27, 46-47, 49-51, and 56 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *LaJoie* (U.S. 5,850,218) in view of *Rubinstein* and further in view of *Young* (U.S. 5,808,608).

VII. ARGUMENT

A. Rejection of Claims 1-5, 32, 34- 35, 38-45, 52-55, and 57-59 under 35 U.S.C. §103:

LaJoie and Rubinstein

Appellant respectfully requests that this rejection be overturned. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (see, e.g., Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

1. Independent Claims 1 and 59

Appellant respectfully submits that claims 1 and 59 are allowable for at least the reason that the proposed combination of *LaJoie* and *Rubinstein* fails to teach, disclose or suggest "configuring each index in a continuous sequence of variably sized user-selectable index ranges...the **size of each of the index ranges based on a predetermined threshold** number of media titles".

LaJoie does not disclose the above-described feature. Instead, *LaJoie* discloses a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claims 1 and 59.

The final Office Action contends (see, e.g., p. 4) that the tabbed index 512 (shown in FIG. 5) of *Rubinstein* corresponds to the above-described feature. Thus, the final Office Action appears to contend that each tab is an "index range" (e.g., 0-9 is a range, A is a range, M-O is a range, etc.). However, *Rubinstein* teaches that the size of a range approaches the average number of information items which start with the alphanumeric character. (See Col. 10, line 45 to Col. 11, line 10). Thus, the comparison in *Rubinstein* is to a **computed** average rather than a "predetermined threshold" as recited in claims 1 and 59.

The final Office Action contends that the average in *Rubinstein* is “predetermined” because the average is “a value that is calculated is used in subsequent combinations of index ranges” (final Office Action, p. 2, “Response to Arguments”). Appellant respectfully disagrees and asserts that in the context of claims 1 and 59, “predetermined” is relative to the action described in the claim, namely “configuring each index”. That is, the threshold for an index is determined before that index is configured. The comparison in *Rubinstein* is to an average (allegedly the claimed “threshold”) which changes as each index range is computed, and is therefore not “predetermined” as that word is understood when the whole of claims 1 and 59 is taken into account.

Accordingly, the proposed combination of *LaJoie* and *Rubinstein* does not teach at least the above-described features recited in claims 1 and 59. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be overturned.

2. Independent Claim 2

Appellant respectfully submits that claim 2 is allowable for at least the reason that the proposed combination of *LaJoie* and *Rubinstein* fails to teach, disclose or suggest “determining a range of values... corresponding to each index in a continuous sequence of variably sized user-selectable index ranges, **the size of each of the index ranges based on a predetermined threshold** number of media titles”.

LaJoie does not disclose the above-described feature. Instead, *LaJoie* discloses a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than “index ranges” as recited in claim 2. The final Office Action contends (see, e.g., p. 4) that the tabbed index 512 (shown in FIG. 5) of *Rubinstein* corresponds to the above-described feature. Thus, the final Office Action appears to contend that each tab is an “index range” (e.g., 0-9 is a range, A is a range, M-O is a range, etc.). However, *Rubinstein* teaches that the size of a range approaches the average number of information items which start with the alphanumeric

character. (See Col. 10, line 45 to Col. 11, line 10). Thus, the comparison in *Rubinstein* is to a **computed** average rather than a "predetermined threshold" as recited in claim 2.

The final Office Action contends that the average in *Rubinstein* is "predetermined" because the average is "a value that is calculated is used in subsequent combinations of index ranges" (final Office Action, p. 2, "Response to Arguments"). Appellant respectfully disagrees and asserts that in the context of claim 2, "predetermined" is relative to the action described in the claim, namely "determining a range of values... corresponding to each index". That is, the threshold for an index is determined before the range of values for that index is determined. The comparison in *Rubinstein* is to an average (allegedly the claimed "threshold") which changes as each index range is computed, and is therefore not "predetermined" as that word is understood when the whole of claim 2 is taken into account.

Accordingly, the proposed combination of *LaJoie* and *Rubinstein* does not teach at least the above-described features recited in claim 2. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be overturned.

3. Independent Claim 52

Appellant respectfully submits that claim 52 is allowable for at least the reason that the proposed combination of *LaJoie* and *Rubinstein* fails to teach, disclose or suggest "determining a range of values... corresponding to each index in a continuous sequence of variably sized user-selectable index ranges, **the size of each of the index ranges based on a predetermined threshold** number of media titles".

LaJoie does not disclose the above-described feature. Instead, *LaJoie* discloses a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claim 52.

The final Office Action contends (see, e.g., p. 4) that the tabbed index 512 (shown in FIG. 5) of *Rubinstein* corresponds to the above-described feature. Thus, the final Office Action appears to contend that each tab is an "index range" (e.g., 0-9 is a range, A is a range, M-O is a

range, etc.). However, *Rubinstein* teaches that the size of a range approaches the average number of information items which start with the alphanumeric character. (See Col. 10, line 45 to Col. 11, line 10). Thus, the comparison in *Rubinstein* is to a **computed** average rather than a "predetermined threshold" as recited in claim 52.

The final Office Action contends that the average in *Rubinstein* is "predetermined" because the average is "a value that is calculated is used in subsequent combinations of index ranges" (final Office Action, p. 2, "Response to Arguments). Appellant respectfully disagrees and asserts that in the context of claim 52, "predetermined" is relative to the action described in the claim, namely "configuring each index". That is, the threshold for an index is determined before that index is configured. The comparison in *Rubinstein* is to an average (allegedly the claimed "threshold") which changes as each index range is computed, and is therefore not "predetermined" as that word is understood when the whole of claim 52 is taken into account.

Accordingly, the proposed combination of *LaJoie* and *Rubinstein* does not teach at least the above-described features recited in claim 52. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be overturned.

4. Claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58

Since independent claims 1, 2, 52, and 59 are allowable, Appellant submits that claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (see, e.g., Fed. Cir. 1988). Therefore, Appellant requests that the rejection of claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58 be overturned.

B. Rejection of Claims 16 and 48 under 35 U.S.C. §103: *LaJoie* and *Rubinstein* and *Knudson*

Rubinstein does not cure the deficiency discussed above in connection with independent claim 1. Since independent claim 1 is allowable for at least the reasons discussed above, Appellant submits that claims 16 and 48 are allowable for at least the reason that each depends

from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (see, e.g., Fed. Cir. 1988). Therefore, Appellant request that the rejection of claims 16 and 48 be overturned.

**C. Rejection of Claims 17-18, 21-23, 25-27, 46-47, 49-51, and 56 under 35 U.S.C. §103:
*LaJoie and Rubinstein and Young***

Appellant respectfully requests that this rejection be overturned. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (see, e.g., Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

1. Independent Claim 17

Appellant respectfully submits that is allowable for at least the reason that the proposed combination of *LaJoie* and *Rubinstein and Young* fails to teach, disclose or suggest "a processor configured to...enable a continuous sequence of variably sized user-selectable index ranges...the **size of each of the index ranges based on a predetermined threshold** number of media titles".

Neither *LaJoie* nor *Young* discloses the above-described feature. *Young* does not discuss indexes or index ranges at all, much less in the context of media titles. *LaJoie* discloses a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claims 1 and 59.

The final Office Action contends (see, e.g., p. 4) that the tabbed index 512 (shown in FIG. 5) of *Rubinstein* corresponds to the above-described feature. Thus, the Office Action appears to contend that each tab is an "index range" (e.g., 0-9 is a range, A is a range, M-O is a range, etc.). However, *Rubinstein* teaches that the size of a range approaches the average number of information items which start with the alphanumeric character. (See Col. 10, line 45

to Col. 11, line 10). Thus, the comparison in *Rubinstein* is to a **computed** average rather than a "predetermined threshold" as recited in claims 1 and 59.

The final Office Action contends that the average in *Rubinstein* is "predetermined" because the average is "a value that is calculated is used in subsequent combinations of index ranges" (final Office Action, p. 2, "Response to Arguments). Appellant respectfully disagrees and asserts that in the context of claim 52, "predetermined" is relative to the action described in the claim, namely "enable a continuous sequence of variably sized user-selectable index ranges". That is, the threshold for an index is determined before the sequence of ranges is enabled. The comparison in *Rubinstein* is to an average (allegedly the claimed "threshold") which changes as each index range is computed, and is therefore not "predetermined" as that word is understood when the whole of claim 52 is taken into account.

Accordingly, the proposed combination of *LaJoie* and *Rubinstein* does not teach at least the above-described features recited in claims 1 and 59. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be overturned.

2. Dependent Claims 18, 22-23, 25-27, 46-47, 49-51, and 56

Independent claim 17 is allowable over the proposed combination of *LaJoie* and *Rubinstein* and *Young* for at least the reasons discussed above in section VII.C.1 above. Therefore dependent claims 18, 21-23, 25-27, and 49-51 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (see, e.g., Fed. Cir. 1988). The addition of *Young* fails to correct the deficiencies of *LaJoie* and *Rubinstein* discussed in section VII.A.1 above in connection with independent claims 1, 2, 52, and 59, and hence claims 1, 2, 52, and 59 are allowable for at least the reasons discussed above. Therefore dependent claims 46-47 and 56 are allowable for at least the reason that each depends from an allowable claim. Accordingly, Appellant requests that the rejection of claims 18, 22-23, 25-27, 46-47, 49-51, and 56 be overturned.

D. Conclusion

For at least the reasons discussed above, Appellant respectfully requests that the Examiner's final rejection of claims 1-5, 16-18, 21-23, 25-27, 32, 34-35, 38-40 and 42-59 be overturned by the Board, and that the application be allowed to issue as a patent with pending claims claims 1-5, 16-18, 21-23, 25-27, 32, 34-35, 38-40 and 42-59.

In addition to the claims listed in Section VIII (CLAIMS – APPENDIX), Section IX (EVIDENCE – APPENDIX) included herein indicates that there is no additional evidence relied upon by this brief. Section X (RELATED PROCEEDINGS – APPENDIX) included herein indicates that there are no related proceedings.

Respectfully submitted,

By: /Karen G. Hazzah/

Karen G. Hazzah,
Reg. No. 48,472

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

600 Galleria Parkway, SE
Suite 1500
Atlanta, Georgia 30339-5948
Tel: (770) 933-9500
Fax: (770) 951-0933

VIII. CLAIMS – APPENDIX

1. A method for providing media information to a user via an interactive media services client device coupled to a programmable media services server device, said method comprising steps of:

receiving media information corresponding to a plurality of accessible media;

configuring a display order of media titles in the received media information according to the value of a media information parameter;

configuring each index in a continuous sequence of variably sized user-selectable index ranges, the size of each of the index ranges based on a predetermined threshold number of media titles;

configuring the continuous sequence of variably sized user-selectable index ranges for indexing the media titles in the display order, each user-selectable index range corresponding directly to the media titles in the received media information determined by a respective range of values of the media information parameter corresponding to the user-selectable index range, such that selection of any of the user-selectable index ranges automatically provides the media titles corresponding to the selected index range;

presenting, to the user, the selectable index ranges in an interactive media guide display, each of the user selectable index ranges being configured to provide the media titles according to the threshold defining a predetermined number of media titles;

receiving selection of a first user-selectable index range, the selection being a triggering event to provide at least a portion of the media titles corresponding to the first user-selectable index range and without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range; and

directly responsive to a user selecting a first user-selectable index range, providing simultaneously in the display order at least a portion of the media titles corresponding to the first user-selectable index range,

wherein, in response to determining that the number of media titles corresponding to the first user-selectable index range is less than the threshold, combining the first user-selectable index range with an index within another user-selectable index range such that the media titles corresponding to the first user-selectable index range and the index within another user-selectable index may be accessed via a combined user-selectable index range.

2. A method for providing media information to a user via an interactive media services client device coupled to a programmable media services server device, said method comprising steps of:

receiving media information corresponding to a plurality of accessible media;

configuring an interactive media guide with a display order of the media titles in the received media information according to the value of a media information parameter and according to a portion of the received media information corresponding to a user-selected category;

determining a range of values of the media information parameter corresponding to each index in a continuous sequence of variably sized user-selectable index ranges, the size of each of the index ranges based on a predetermined threshold number of media titles in the portion of the received media information corresponding to the respective range of values;

configuring the interactive media guide with the continuous sequence of variably sized user-selectable index ranges indices for indexing the media titles in the display order;

presenting to a user an interactive media guide having a plurality of indexing prompts, each of the indexing prompts directly corresponding to one and only one user-selectable index

range, such that selection of any of the user-selectable index ranges automatically provides the media titles corresponding to the selected index;

receiving a first user input indicating selection of a first user-selectable index range, the selection being a triggering event to provide at least a portion of the media titles corresponding to the first user-selectable index range and without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range; and

responsive to the first user input, providing simultaneously in the display order at least a portion of the media titles corresponding to the first user-selectable index range and the user-selected category.

3. The method of claim 1, wherein the range of values defining each user-selectable index is selected from a group consisting of:

an alphanumeric character, a plurality of alphanumeric characters, a year, a plurality of years, a rating, a plurality of ratings.

4. The method of claim 1, wherein the media is selected from a group consisting of: title name, director name, actor name, year of release, title rating, and critic rating.

5. The method of claim 1, further comprising the step of: receiving user input identifying the media information parameter for indexing the media titles.

16. The method of claim 1, further comprising the step of: charging the user a fee in connection with the provision of indexing functionality.

17. An interactive media services client device for providing media information to a user comprising:

memory for storing media information received from a server, said media information corresponding to a plurality of respective accessible media; and
a processor configured to:

cause a display order of the media titles in the received media information according to the value of the release year of the media title;

enable a continuous sequence of variably sized user-selectable index ranges, for indexing displayed media titles, each user-selectable index range directly corresponding to a range of time, the size of each of the index ranges based on a predetermined threshold number of media titles;

determine the media titles in the received media information corresponding to each user-selectable index range and a user-selected category;

present, to the user, the selectable index ranges in an interactive media guide display, each of the user selectable index ranges being configured to provide a portion of the media titles based on a predetermined threshold number of media titles, directly in response to selection of one of the selectable index ranges; and

directly responsive to a user input, provide simultaneously in the display order at least a portion of the media titles in the received media information corresponding to a first user-selectable index range and the user-selected display, without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range.

18. The client device of claim 17, wherein only media titles belonging to a sub-list of media titles are provided to the user.

21. The interactive media services client device of claim 17, further comprising:
receiving user input identifying the first user-selectable index range.

22. The interactive media services client device of claim 21, wherein the media titles are ordered based on both the user-selected category and the first user-selectable index range.

23. The interactive media services client device of claim 17, wherein user input is initiated by the user pressing an arrow button on a remote control device.

25. The interactive media services client device of claim 51, wherein the first user-selectable index range and a first media title associated with said first user-selectable index range are highlighted.

26. The interactive media services client device of claim 25, wherein a second media title associated with a second user-selectable index range is highlighted in response to the client device receiving user input designating said second user-selectable index range to be highlighted.

27. The interactive media services client device of claim 25, wherein a second user-selectable index range associated with a second media title is highlighted in response to the client device receiving user input designating said second media title to be highlighted.

32. The interactive media services client device of claim 52, further comprising:
receiving user input identifying the first user-selectable index range.

34. The interactive media services client device of claim 52, wherein user input is initiated by the user pressing an arrow button on a remote control device.

35. The interactive media services client device of claim 52, wherein said interactive media guide includes a plurality of indexing prompts and a plurality of media titles.

38. The interactive media services client device of claim 58, wherein a second user-selectable index range associated with a second media title is highlighted in response to the client device receiving user input designating said second media title to be highlighted.

39. The method of claim 2, wherein the first range of values defining each user-selectable index range is from a group consisting of:

an alphanumeric character, a plurality of alphanumeric characters, a media title release year, a plurality of years, a rating, a plurality of ratings.

40. The method of claim 2, wherein the media information parameter is selected from a group consisting of:

title name, director name, actor name, year of release, title rating, critic rating.

42. The method of claim 1, wherein each respective range of values defining a user-selectable index range is further determined according to a second threshold defining a second predetermined number of media titles.

43. The method of claim 2, wherein each respective range of values is further determined according to a first threshold defining a first predetermined number of media titles.

44. The method of claim 1, wherein the first range of values defining the first user-selectable index range is an alphanumeric character and a second range of values defining a second user-selectable index range is at least two alphanumeric characters.

45. The method of claim 2, wherein the first range of values defining the first user-selectable index range is an alphanumeric character and a second range of values defining a second user-selectable index range is a plurality of alphanumeric characters.

46. The method of claim 1, wherein the media information parameter corresponds to a media release year, the first range of values defining the first user-selectable index range is a year, and a second range of values defining a second user-selectable index range is a plurality of years.

47. The method of claim 2, wherein the media information parameter corresponds to a media release year, the first range of values defining the first user-selectable index range is a year, and a second range of values defining a second user-selectable index range is a plurality of years.

48. The method of claim 2, further comprising the step of:
charging the user a fee in connection with the provision of indexing functionality.

49. The interactive media services client device of claim 17, wherein the user-selected category corresponds to the media titles in the received media information corresponding to all the movies in the media information.

50. The interactive media services client device of claim 17, wherein the user-selected category corresponds a portion of the media titles in the received media information corresponding to one from: horror, drama, comedy, action, and foreign.

51. The interactive media services client device of claim 17, wherein a first range of values corresponding to the first user-selectable index range is a year, and a second range of values corresponding to a second user-selectable index range is a plurality of years.

52. An interactive media services client device for providing media to a user comprising:
memory for storing media information received from a server, said media information corresponding to a plurality of respective accessible media; and
a processor configured to:

cause a display order of media titles in the received media information according to the value of a media information parameter and according to a portion of the received media information;

determine a range of values of the media information parameter corresponding to each index in a continuous sequence of variably sized user-selectable index ranges the size of each of the index ranges based on a predetermined threshold of number of media titles in the portion of the received media information corresponding to the respective range of values;

enable an interactive media guide with the continuous sequence of variably sized user-selectable index ranges for indexing the media titles in the display order;

present to a user the interactive media guide having a plurality of indexing prompts, each of the indexing prompts directly corresponding to one and only one of the respective user-selectable index ranges such that selection of any of the user-selectable index ranges automatically provides the media titles corresponding to the selected index range;

receive a first user input identifying a first indexing prompt directly corresponding to a first user-selectable index range; and

directly responsive to the first user input, provide simultaneously in the first display order at least a portion of the media titles corresponding to the first user-selectable index range and a user-selected category,

wherein the at least a portion of the media titles are displayed without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range.

53. The client device of claim 52, wherein the portion of the received media information corresponds to a user-selected category.

54. The interactive media services client device of claim 53, wherein the user-selected category corresponds to the media titles in the received media information corresponding to all the movies in the media information.

55. The interactive media services client device of claim 52, wherein first range of values defining the first user-selectable index range is an alphanumeric character and a second range of values defining a second user-selectable index range is at least two alphanumeric characters.

56. The interactive media services client device of claim 32, wherein media information parameter corresponds to a media release year, the first range of values defining the first user-selectable index range is a year, and a second range of values defining a second user-selectable index range is a plurality of years.

57. The interactive media services client device of claim 53, wherein the media titles are ordered based on both the user-selected category and the first user-selectable index range.

58. The interactive media services client device of claim 52, wherein the first user-selectable index range and a first media title associated with said first user-selectable index range are highlighted.

59. A method for providing media information to a user via an interactive media services client device coupled to a programmable media services server device, said method comprising steps of:

receiving media information corresponding to a plurality of accessible media;
configuring a display order of media titles in the received media information according to the value of a media information parameter;

configuring each index in a continuous sequence of variably sized user-selectable index ranges, according to the display order the size of each of the index ranges based on a predetermined threshold number of media titles;

configuring the continuous sequence of variably sized user-selectable index ranges for indexing the media titles in the display order, each user-selectable index range directly corresponding to the media titles in the received media information determined by a respective range of values of the media information parameter corresponding to the user-selectable index range, such that selection of any of the user-selectable index ranges automatically provides the media titles corresponding to the selected index range; and

directly responsive to a user selecting a first user-selectable index range, providing simultaneously in the display order at least a portion of the media titles corresponding to the first user-selectable index range,

wherein the at least a portion of the media titles are displayed without presenting an additional index range that was not previously presented prior to selection of the first user-selectable index range.

IX. EVIDENCE – APPENDIX

None.

X. RELATED PROCEEDINGS – APPENDIX

None.